IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 11TH OCTOBER 2007 / 19TH ASWINA 1929

Crl.MC.No. 3034 of 2007()

AGAINST THE ORDER IN CC 13/2001 IN
LP.232/2004 of ADDL.CHIEF JUDICIAL MAGISTRATE, ERNAKULAM

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PETITIONER:

P.K.GANESH, PALLATHU HOUSE,
ARANATTUKARA, TRICHUR.

BY ADV. SRI.K.R.SUNIL

RESPONDENTS:

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1. THE MANAGER,
M/S.APPLE CREDIT CORPORATION,
SOUTH STATE ESTATE, VIGNESH COMPLEX,
PARAMPITHARA ROAD, PANAMPILLY NAGAR,
COCHIN - 36.

2. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 11/10/2007, ALONG WITH CRMC NO.3036 OF 2007. THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.Nos.3034 & 3036 of 2007

Dated this the 11th day of October 2007

O R D E R

The petitioner faces indictment in two separate prosecutions both under Section 138 of the Negotiable Instruments Act, both initiated by the same respondent. According to the petitioner, his wife has availed a loan from the complainant and the petitioner was a guarantor for the loan availed by his wife. The cheques were allegedly issued for discharge of the liability to pay EMIs due to the complainant in respect of that vehicle transaction. The cheques were presented. They were dishonoured. Proceedings were initiated under Section 138 of the Negotiable Instruments Act.

2. It is submitted that after the presentation and dishonour of the cheques, the vehicle was repossessed by the complainant armed with certain orders issued by the civil court. It is submitted that the vehicle has subsequently been sold and amounts have been realised. There is no contention even before me that the entire liability stands discharged by the proceeds

realised by the sale of the vehicle. The petitioner raises a contention that all the amounts covered by the cheques issued for the discharge of the EMI liability stand discharged by the proceeds realised by the sale of the vehicle. I intend only to take note of two crucial facts and those facts are:

i) Both the cheques were dischonoured long prior to the repossession of the vehicle.

ii) The petitioner does not have a case that the entire liability in the vehicle transaction stands discharged by the sale of the vehicle and realisation of the proceeds.

3. The petitioner contends that there is a failure of consideration and therefore Section 43 of the Negotiable Instruments Act comes into play. I am certainly of the opinion that in the circumstances of the case to which I have already referred, it is for the petitioner to appear before the learned Magistrate and raise these contentions before the learned Magistrate. A case sufficient to invoke the powers under Section 482 Cr.P.C and quash the proceedings has not been made out and therefore I am not persuaded to invoke the jurisdiction under Section 482 Cr.P.C to bring to premature termination these prosecutions.

4. These petitions are in these circumstances dismissed. I may hasten to observe that I have not at all intended to express any final opinion on the disputed contentions. The petitioner's option to raise all contentions before the learned Magistrate shall remain unfettered by the dismissal of these Criminal Miscellaneous Cases. I have only chosen to take the view that the inherent jurisdiction under Section 482 Cr.P.C does not deserve to be invoked.

(R.BASANT, JUDGE)

jsr

// True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007